Titular Roman Catholic Archbishop of Kuala Lumpur v Menteri Dalam Negeri & Anor

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO R1–25–28 OF 2009
LAU BEE LAN J
31 DECEMBER 2009

Administrative Law — Judicial review — Application for — Application for judicial review and certiorari to quash decision by Minister of Home Affairs ('Minister') to approve publication permit subject to condition applicant prohibited from using 'Allah' in its publication — Whether decision by Minister illegal, unconstitutional and unreasonable — Error of law — Whether Minister erred in imposing condition in dispute to publication permit – Whether error of law warranted judicial interference — Whether condition imposed that applicant prohibited from using 'Allah' in its publication illegal, null and void — Whether use of 'Allah' a threat to national security — Rules of the High Court 1980 O 53 r 3(1) — Printing Presses and Publications (Licenses and Permits) Rules 1984 r 3 — Printing Presses and Publications Act 1984 ss 6 & 26 — Federal Constitution arts 3, 10 & 11

Administrative Law — Remedies — Declaration — Application for — Whether decision by first respondent illegal, unconstitutional and unreasonable — Whether use of 'Allah' was exclusive to religion of Islam

The Titular Roman Catholic Archbishop of Kuala Lumpur, the applicant, was granted a publication permit by the first respondent, the Minister of Home Affairs to publish the 'Herald-the Catholic Weekly' ('the publication'). On 8 January 2009, the applicant received a letter dated 7 January 2009 from the first respondent approving the publication permit for the publication for the period 1 January 2009 until 31 December 2009 subject to the condition that the applicant was prohibited from using the word 'Allah' in the publication ('the impugned decision'). This was the applicant's application under O 53 r 3(1) of the Rules of the High Court 1980 ('the RHC') for judicial review of the impugned decision of the first respondent. By way of this application the applicant sought leave for an order of certiorari to quash the impugned decision and for an order for stay of the impugned decision pending the court's determination of the matter, and for various declarations with costs in the cause. The applicant sought to challenge the impugned decision under the heads of illegality, unconstitutionality, 'Wednesbury

unreasonableness' and ultra vires the Printing Presses and Publication Act 1984 ('the Act'). In support of its submission on illegality the appellant contended that the first respondent in the exercise of its discretion to impose further conditions in the publication permit had failed to take into account relevant considerations, such as the fact that the word 'Allah' is the correct Bahasa Malaysia word for 'God' and that in the Bahasa Malaysia translation of the Bible, 'God' is translated as 'Allah', but had instead taken into account one or more irrelevant considerations. The applicant's grounds for the reliefs of certiorari and declaration are premised on the unconstitutional acts and conduct being inconsistent with arts 3(1), 10, 11 and 12 of the Federal Constitution, namely that the applicant's right to use the word 'Allah' stemmed from the applicant's constitutional rights to freedom of speech and expression and religion and in instructing and educating the Catholic congregation in the Christian religion. In reply to this the respondent submitted that the applicant had not demonstrated in its affidavit how it was unable to profess and practise its religion under arts 3 and 11 of the Federal Constitution because it had been prohibited from using the word 'Allah' in its publication. The applicant further challenged the impugned decision under the head of irrationality or Wednesbury unreasonableness by contending that it was irrational on the part of the respondents on the one hand not to prohibit the congregation of the Catholic Church to use the word 'Allah' for worship and in the Bible and on the other hand to state that the word cannot be used in the publication. In reply to this contention the first respondent replied that it was acting within the four corners of its jurisdiction and had taken into account relevant considerations such as the status of Islam under the Constitution, the various Enactments on control, government policy, public security and safety and religious sensitivity. The respondent also averred that the use of the word 'Allah' should be restricted to its use in the Bible as the Bible was not meant for Muslims but only found in the possession or use of Christians in churches. Basically the first respondent sought to justify its decision by submitting that by virtue of r 3 of the Printing Presses and Publications (Licenses and Permits) Rules 1984 ('the 1984 Rules') read together with ss 6 and 26 of the Act it may attach any condition it deemed fit and that its decision was thus legal and in accordance with the law. The first respondent also submitted that the applicant could not challenge the first respondent's decision because of the ouster clause in s 13A of the Act. The respondent further submitted that the use of the word 'Allah' by the applicant in its publication endangered public order and national security.

Held, allowing the application with no order as to costs:

(1) The first respondent could not rely on r 3 of the 1984 Rules to impose conditions on the publication permit that it granted to the applicant. As

rightly pointed out by the applicant, s 12 of the Act is the enabling provision under which the first respondent derives its powers to impose conditions and the form of the permit as well as the standard conditions in the permit including the further conditions which the Minister may endorse are governed by r 3 of the 1984 Rules. Flowing from this, the first respondent's contention that the applicant cannot challenge its decision because of the ouster clause in s 13A of the Act is misconceived. There are a plethora of authorities which indicate that judicial review is not ousted to correct errors of law by an administrative body or tribunal (see paras 16–18).

(2) The first respondent in the exercise of its discretion to impose further conditions in the publication permit issued had not taken into account the relevant matters alluded to by the applicant, hence committing an error of law that warranted judicial interference. Further, there was no factual basis, in view of the uncontroverted historical evidence averred in the applicant's affidavit, for the first respondent to impose the condition under dispute in the publication permit (see paras 23, 26, 28–29).

(3) Pursuant to art 3(1) of the Federal Constitution, Islam is the official religion of the federation but other religions may be practised in peace and harmony in any part of the federation. As there is no doubt that Christianity is a religion, the question that had to be considered was whether the use of the word 'Allah' is a practice of the Christian religion. Whether a practice is or is not an integral part of the religion is not the only factor to be considered and there are other equally important factors. From the evidence it is apparent that the use of the word 'Allah' is an essential part of the worship and instruction in the faith of the Malay speaking community of the Catholic Church and is integral to the practice and propagation of their faith. Thus the imposition of the condition prohibiting the use of the word 'Allah' in the publication contravened the provision of arts 3(1), 11(1) and 11(3) of the Federal Constitution and was therefore unconstitutional. Further the imposition of the condition in dispute also amounted to an unreasonable restriction on the freedom of speech and expression under art 10(1)(c) and an unreasonable administrative act which impinges on the first limb of art 8(1) which demands fairness of any form of state action. Thus for all these reasons the condition imposed that the applicant was prohibited in using the word 'Allah' in its publication was illegal, null and void (see paras 33–35, 40–42).

(4) Having permitted albeit with the usual restrictions the use of the word 'Allah' for worship and in the Bible, it would only be logical and reasonable for the respondents to allow the use of the word 'Allah' in the publication drawing an analogy by invoking the maxim 'The greater

contains the less'. When viewed on its merits it would appear that the respondents were acting illogically, irrationally and inconsistently and the reasons given by the first respondent in the various directives defied all logic and were unreasonable (see paras 48–49).

(5) Section 9 of the various state Enactments provide for an offence relating to the use of certain words and expressions. However s 9 ought to be read in conjunction with art 11(4) of the Federal Constitution, for if so the result will be that a non-Muslim could be committing an offence if he uses the word 'Allah' to a Muslim but there would be no offence if it was used to a non-Muslim. This rule of construction was permissible in the light of the mischief the state Enactments sought to cure and the provision had to be interpreted to conform to the Constitution. The other approach of interpretation was the doctrine of proportionality under which the test was whether the legislative state action, which includes executive and administrative acts of the state, was disproportionate to the object it sought to achieve. Applying this test to the factual matrix of the present case the court had to bear in mind the constitutional and fundamental rights of persons professing the Christian faith and of the fact that the Catholic Church comprised a large section of people who's medium of instruction was Bahasa Malaysia and who had called their god 'Allah' (see paras 51—56).

(6) There was no material to support the respondents' argument that the use of the word 'Allah' was a threat to national security (see para 64).

(7) Although the respondents contended that the publication permit was governed by considerations of national security, merely citing national security was not sufficient to make a subject matter of a decision justiciable. The court had to determine whether the impugned decision was in fact based on grounds of national security. Having reviewed the constitutionality of federal and state legislation relied on by the decision maker it was found that the subject matter of these proceedings was non-justiciable (see paras 78–83).

[Bahasa Malaysia summary

Pemohon, Titular Roman Catholic Archbishop, Kuala Lumpur, diberikan permit penerbitan oleh responden pertama, Kementerian Dalam Negeri untuk menerbitkan 'Herald – the Catholic Weekly' ('penerbitan tersebut'). Pada 8 January 2009, pemohon mendapat surat bertarikh 7 Januari 2009 daripada responden pertama meluluskan permit penerbitan untuk penerbitan tersebut bagi tempoh 1 Januari 2009 hingga 31 December 2009 dengan syarat pemohon tidak dibenarkan menggunakan perkataan 'Allah' dalam penerbitan tersebut ('keputusan yang dipersoalkan'). Ini merupakan permohonan pemohon di bawah A 53 k 3(1) Kaedah-Kaedah Mahkamah

Rendah 1980 ('KMT') untuk semakan kehakiman bagi keputusan responden pertama yang dipersoalkan itu. Menerusi permohonan ini pemohon memohon keizinan untuk perintah certiorari untuk membatalkan keputusan yang dipersoalkan tersebut dan juga perintah penggantungan bagi keputusan yang dipersoalkan tersebut sementara penentuan mahkamah atas perkara tersebut, dan beberapa pengisytiharan lain dengan kos dalam kausa. Pemohon memohon untuk mencabar keputusan yang dipersoalkan tersebut di bawah tajuk tidak sah di sisi undang-undang, tidak berpelembagaan, 'Wednesbury unreasonableness' dan ultra vires Akta Mesin Cetak dan Penerbitan 1984 ('Akta'). Untuk menyokong hujahannya bagi tajuk tidak sah di sisi undang-undang, perayu menghujah bahawa responden pertama, dalam melaksanakan budi bicaranya untuk mengenakan syarat-syarat lanjut kepada permit penerbitan tersebut, telah gagal mengambilkira syarat-syarat yang relevan, seperti fakta bahawa perkataan 'Allah' merupakan perkataan Bahasa Malaysia yang betul bagi 'Tuhan' dan dalam kitab Injil terjemahan Bahasa Malaysia, 'Tuhan' diterjemahkan kepada 'Allah', tetapi sebaliknya telah mengambilkira satu atau lebih syarat-syarat yang tidak relevan. Alasan-alasan pemohon untuk relief certiorari dan perisytiharan tersebut adalah berdasarkan kepada tindakan dan kelakuan yang tidak berpelembagaan, bercanggahan dengan perkara-perkara 3(1), 10, 11 dan 12 Perlembagaan Persekutuan, iaitu hak pemohon untuk menggunakan perkataan 'Allah' adalah berpunca daripada hak berpelembagaan pemohon untuk kebebasan bercakap dan bersuara dan beragama dan dalam memperkenalkan dan mendidik jemaah Katolik dalam agama Kristian. Sebagai jawapan, responden berhujah bahawa pemohon tidak menunjukkan dalam afidavitnya bagaimana ia tidak boleh menganut dan mengamalkan agamanya di bawah perkara-perkara 3 dan 11 Perlembagaan Persekutuan disebabkan ia dihalang menggunakan perkataan 'Allah' dalam penerbitannya. Pemohon seterusnya mencabar keputusan yang dipersoalkan tersebut di bawah tajuk tidak rasional atau 'Wednesbury unreasonableness' dengan menghujahkan bahawa responden tidak rasional dengan tidak menghalang jemaah Gereja Katolik menggunakan perkataan 'Allah' untuk beribadat dan dalam kitab Injil tetapi sebaliknya menyatakan bahawa perkataan tersebut tidak boleh digunakan dalam penerbitan tersebut. Sebagai balasan bagi hujahan ini, responden pertama menjawab bahawa ia bertindak dari pelbagai segi bidang kuasanya dan juga telah mengambilkira pertimbangan-pertimbangan relevan seperti kedudukan Islam dalam Perlembagaan, beberapa Enakmen tentang kawalan, polisi kerajaan, keselamatan awam dan juga sensitiviti agama. Responden juga menegaskan bahawa penggunaan perkataan 'Allah' harus dihadkan kepada penggunaan dalam kitab Injil kerana kitab Injil bukan untuk Muslim tetapi hanya dimiliki atau digunakan oleh orang Kristian di gereja-gereja. Secara dasarnya, responden pertama memohon untuk menjustifikasikan keputusannya dengan menghujah bahawa berikutan dengan peraturan 3 Peraturan-Peraturan Mesin Cetak dan Penerbitan (Lesen dan Permit) 1984 ('Peraturan-Peraturan 1984') dibaca bersama ss 6 dan 26 Akta responden

pertama boleh mengenakan sebarang syarat yang difikirkannya perlu dan bahawa keputusannya sah di sisi undang-undang dan menepati undang-undang. Responden pertama juga menghujahkan bahawa pemohon tidak boleh mencabar keputusannya disebabkan oleh klausa penyingkiran dalam s 13A Akta. Responden seterusnya menghujah bahawa penggunaan perkataan 'Allah' oleh pemohon dalam penerbitannya membahayakan ketenteraman awam dan keselamatan dalam negeri.

Diputuskan, membenarkan rayuan tanpa perintah mengenai kos:

(1) Responden pertama tidak boleh bergantung kepada peraturan 3 Peraturan-Peraturan 1984 untuk mengenakan syarat-syarat ke atas permit penerbitan yang telah diberikan kepada pemohon. Seperti yang telah dikatakan dengan tepatnya oleh pemohon, s 12 Akta merupakan peruntukan yang diperlukan bagi responden pertama mengenakan syarat-syarat dan juga jenis permit tersebut begitu juga dengan standard syarat-syarat dalam permit tersebut termasuklah syarat-syarat lanjut yang mana Menteri tersebut boleh sahkan tertakluk di bawah peraturan 3 Peraturan-Peraturan 1984 tersebut. Berikutan ini, hujahan responden pertama bahawa pemohon tidak boleh mencabar keputusannya disebabkan oleh klausa penyingkiran dalam s 13A Akta telah disalah tanggap. Terlalu banyak autoriti yang menunjukkan bahawa semakan kehakiman tidak akan disingkirkan oleh suatu badan pentadbiran atau tribunal untuk membetulkan kesilapan undang-undang (lihat perenggan 16–18).

(2) Responden pertama dalam melaksanakan budi bicaranya untuk mengenakan syarat-syarat lanjut dalam permit penerbitan yang telah dikeluarkan tidak mengambilkira hal-hal yang relevan seperti yang dinyatakan oleh pemohon, maka telah melakukan kesilapan undang-undang yang memerlukan campur tangan kehakiman. Selanjutnya, tiada bias faktual, berkaitan dengan keterangan sejarah yang tidak dipertikaikan seperti yang ditegaskan dalam afidavit pemohon, bagi responden pertama mengenakan syarat yang dipersoalkan dalam permit penerbitan tersebut (lihat perenggan 23, 26, 28–29).

(3) Berikutan perkara 3(1) Perlembagaan Persekutuan, Islam merupakan agama rasmi persekutuan tetapi agama-agama lain boleh diamalkan dengan aman dan tenteram di mana-mana tempat dalam persekutuan ini. Kerana tidak diragui bahawa Kristian merupakan satu agama, persoalan yang perlu dipertimbangkan ialah sama ada penggunaan 'Allah' merupakan amalan dalam agama Kristian. Sama ada amalan itu merupakan bahagian penting atau tidak dalam agama tersebut bukanlah hanya merupakan faktor yang perlu dipertimbangkan dan ada

juga faktor lain yang sama penting. Daripada keterangan adalah jelas bahawa penggunaan perkataan 'Allah' adalah bahagian penting dalam ibadat dan ajaran agama tersebut bagi komuniti gereja Katolik yang bertutur dalam bahasa Melayu dan merupakan amalan penting dalam amalan dan penyebaran agama mereka. Maka, mengenakan syarat menghalang penggunaan perkataan 'Allah' dalam penerbitan tersebut adalah bercanggah dengan perkara-perkara 3(1), 11(1) dan 11(3) Perlembagaan Persekutuan dan oleh itu tidak berpelembagaan. Selanjutnya mengenakan syarat yang dipertikaikan tersebut juga merupakan sekatan yang tidak wajar kepada kebebasan bercakap dan bersuara di bawah perkara 10(1)(c) dan juga merupakan tindakan pentadbiran yang tidak wajar yang mempengaruhi bahagian pertama perkara 8(1) yang menuntut keadilan dalam semua bentuk tindakan negeri. Oleh itu, bagi kesemua alasan ini, syarat yang dikenakan bahawa pemohon dihalang menggunakan perkataan 'Allah' dalam penerbitannya adalah salah di sisi undang-undang, batal dan tidak sah (lihat perenggan 33–35, 40–42).

(4) Dengan membenarkan, walau dengan sekatan-sekatan yang biasa, penggunaan 'Allah' dalam ibadat dan kitab Injil, adalah logik dan wajar bagi responden-responden membenarkan penggunaan 'Allah' dalam penerbitan tersebut dengan mengambilkira analogi dengan menggunapakai maksim 'The greater contains the less'. Apabila dinilai pada meritnya, kelihatan responden-responden bertindak tidak logik, tidak wajar dan tidak konsisten dan alasan-alasan yang diberikan oleh responden pertama dalam pelbagai arahannya tidak logik dan tidak wajar (lihat perenggan 48–49).

(5) Seksyen 9 dalam beberapa Enakmen negeri memperuntukkan bagi kesalahan berkaitan dengan penggunaan beberapa perkataan dan ungkapan. Walau bagaimanapun s 9 harus dibaca bersama dengan perkara 11(4) Perlembagaan Persekutuan, kerana jika begitu, akan memberi kesan bahawa orang bukan Islam akan melakukan kesalahan jika dia menggunakan perkataan 'Allah' kepada orang Islam tetapi tidak akan menjadi kesalahan jika digunakan kepada orang bukan Islam. Pentafsiran sebegini dibenarkan bagi Enakmen-Enakmen negeri tersebut yang bertujuan untuk menangani keburukan dan hendaklah ditafsir selaras dengan Perlembagaan. Satu lagi pendekatan pentafsiran ialah doktrin perkadaran yang mana ujiannya adalah sama ada tindakan perundangan negeri, yang mana termasuk tindakan-tindakan eksekutif dan pentadbiran negeri tersebut tidak berkadaran dengan objektif yang ingin dicapainya. Menggunapakai ujian ini kepada matriks faktual kes ini, mahkamah harus meneliti hak-hak perlembagaan dan asasi orang yang beragama Kristian dan fakta bahawa Gereja Katolik terdiri daripada ramai orang yang menggunakan Bahasa Malaysia dan memanggil tuhan mereka 'Allah' (lihat perenggan 51–56).

(6) Tiada material untuk menyokong hujahan responden-responden bahawa penggunaan 'Allah' mengancam keselamatan negara (lihat perenggan 64).

(7) Walaupun responden-responden berhujah bahawa permit penerbitan tersebut tertakluk kepada pertimbangan keselamatan negara, dengan hanya menyebut keselamatan negara adalah tidak mencukupi bagi menjadikan hal perkara yang diputuskan tersebut boleh dihakimi. Mahkamah harus mempertimbangkan sama ada keputusan yang dipertikaikan tersebut dibuat berdasarkan dasar-dasar keselamatan negara. Setelah meneliti keperlembagaan perundangan persekutuan dan negeri yang dirujuk oleh kerajaan, didapati bahawa hal perkara bagi prosiding-prosiding ini tidak boleh dihakimi (lihat perenggan 78–83).]

Notes

For cases on application for judicial review, see 1 *Mallal's Digest* (4th Ed, 2005 Reisssue) paras 191–197.

For cases on declaration, see 1 *Mallal's Digest* (4th Ed, 2005 Reisssue) paras 500–571.

Cases referred to

Ahmad Yani bin Ismail & Anor v Inspector General of Police & Ors [2005] 4 MLJ 636, HC (refd)

Associated Provincial Picture Houses, Limited v Wednesbury Corporation [1948] 1 KB 223, CA (refd)

Chan Hiang Leng Colin & Ors v Minister for Information and the Arts [1996] 1 SLR 609, CA (refd)

Clang Suan Tze v The Minister of Home Affairs & Ors and other appeals [1989] 1 MLJ 69, CA (refd)

Council of Civil Service Unions & Ors v Minister for the Civil Service [1985] 1 AC 374, HL (refd)

Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor [1992] 1 MLJ 697, SC (folld)

Dr Mohd Nasir bin Hashim v Menteri Dalam Negeri Malaysia [2006] 6 MLJ 213, CA (refd)

Harris Solid State (M) Sdn Bhd & Ors v Bruno Gentil s/o Pereira & Ors [1996] 3 MLJ 489, CA; [1996] 4 CLJ 747, CA (refd)

JP Berthelsen v Director General of Immigration, Malaysia & Ors [1987] 1 MLJ 134, FC (refd)

Kerajaan Malaysia & Ors v Nasharuddin Nasir [2004] 1 CLJ 81, FC (refd)

Majlis Agama Islam Selangor v Bong Boon Chuen & Ors [2009] 6 MLJ 307, FC (refd)

Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 MLJ 1; [1999] 3 CLJ 65, FC (refd)

Mamat bin Daud & Ors v Government of Malaysia [1988] 1 MLJ 119, SC (not folld)
Meor Atiqulrahman bin Ishak (an infant, by his guardian ad litem, Syed Ahmad Johari bin Syed Mohd) & Ors v Fatimah bte Sihi & Ors [2006] 4 MLJ 605; [2006] 4 CLJ 1, FC (folld)
Minister of Labour, Malaysia v Lie Seng Fatt [1990] 2 MLJ 9; [1990] 1 CLJ (Rep) 195, SC (refd)
Minister of Home Affairs v Persatuan Aliran Kesedaran Negara [1990] 1 MLJ 351; [1990] 1 CLJ (Rep) 186, SC (refd)
Ng Hee Thoong & Anor v Public Bank Bhd [1995] 1 MLJ 281, CA (refd)
Padfield & Ors v Minister of Agriculture, Fisheries and Food & Ors [1968] 1 All ER 694, HL (refd)
R v Secretary of State for the Home Department, ex parte McAvoy [1984] 3 All ER 417, QBD (refd)
Rev Stainislaus v State of Madhya Pradesh & Ors AIR 1977 SC 908 (refd)
Sagnata Investments Ltd v Norwich Corporation [1971] 2 QB 614, CA (refd)
Sivarasa v Badan Peguam Malaysia & Anor (unreported; 17 November 2009, Rayuan Sivil No 1–8 of 2006(W)), FC (refd)
Sulaiman bin Takrib v Kerajaan Negeri Terengganu (Kerajaan Malaysia, intervener) & other applications [2009] 6 MLJ 354; [2009] 2 CLJ 54, FC (not folld)
Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union [1995] 2 MLJ 317, CA (refd)
Titular Roman Catholic Archbishop of Kuala Lumpur v Menteri Keselamatan Dalam Negeri & Anor [2008] 9 CLJ 503, HC (refd)

Legislation referred to

Administration of Islamic Religious Affairs (Terengganu) Enactment 2001 s 51
Betting, Gaming and Lotteries Act 1963 [UK]
Control and Restriction of the Propagation of Non Islamic Religions Enactment 1991 (Johor Enactment No 12/1991) s 9
Control and Restriction of the Propagation of Non Islamic Religions Enactment 1988 (Kedah Darul Aman Enactment No 11/1988) s 9
Control and Restriction of the Propagation of Non Islamic Religions Enactment 1981 (Kelantan Enactment No 11/1981) s 9
Control and Restriction of the Propagation of Non Islamic Religions to Muslim Enactment 1988 (Malacca Enactment No 1/1988) s 9
Control and Restriction (The Propagation of Non Islamic Religions Amongst Muslims) (Negeri Sembilan) Enactment 1991 (Negeri Sembilan Enactment No 9/1991) s 9
Control and Restriction of the Propagation of Non Islamic Religions Enactment 1989 (Pahang Enactment No 5/1989) s 9
Control and Restriction of the Propagation of Non Islamic Religions Enactment 1988 (Perak No 10/1988) s 9

Control and Restriction of the Propagation of Non Islamic Religions Enactment 1980 (State of Terengganu Enactment No 1/1980) s 9
Control and Restriction of the Propagation of Religious Doctrine and Belief which is Contrary to the Religion of Islam Enactment 2002 (Perlis Enactment No 6 of 2002) s 9
Federal Constitution arts 3, 3(1), 4(4), 8, 8(1), 10, 10(1)(a), (1)(c), (2), 11, 11(1), (3), (4), 12, 74, 74(1), 77, Part II, Ninth Schedule List II item 1
Industrial Relations Act 1967 s 20(3)
Legal Profession Act 1976 s 46A(1)
Non Islamic Religions (Control of Propagation Amongst Muslims) Enactment 1988 (Selangor Enactment No 1/1988) s 9
Penal Code s 298A
Printing Presses and Publications Act 1984 ss 6, 12, 13A, 13A(1), 26
Printing Presses and Publications (Licenses and Permits) Rules 1984 r 3, First Schedule Form B
Rules of the High Court 1980 O 24, O 38, O 53 rr 2(4), 3(1), 6, 8, 9
Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001 ss 10, 14

Porres Royan (S Selvarajah, Leonard Teoh, Annou Xavier and Benjamin Dawson with him) (Fernandez & Selvarajah) for the applicant.

Kamaludin bin Md Said (Mohd Nasir bin Desa, Suzana bt Atan, Arik Sanuasi bin Yeop Johari, Andi Razalijaya A Dadi with him) (Senior Federal Counsel, Attorney General's Chambers) for the first and second respondents.

Mubashir Mansor (Abd Rahim bin Sinwan with him) (Zainul Rijal Talha & Amir) for Majlis Agama Islam dan Adat Melayu Terengganu and Majlis Agama Islam Wilayah Persekutuan, (Adli & Co) for Majlis Agama Islam Melaka, (Omayah, Nawal & Partners) for Majlis Agama Islam Negeri Kedah, (Azra & Associates) for Majlis Agama Islam Selangor, the interveners.

Mohd Tajuddin bin Abd Razak (Tajuddin Razak) for the Malaysia Chinese Muslim Association, the intervener.

Ikbal Salam (Ikbal Salam & Associates) for Majlis Agama Islam Negeri Johor, the intervener.

Lau Bee Lan J:

[1] The applicant, the Titular Roman Catholic Archbishop of Kuala Lumpur, is the publisher of 'Herald – the Catholic Weekly' ('the said publication') is published on behalf of the Bishops of Peninsular Malaysia pursuant to a publication permit issued by the first respondent, the Minister of Home Affairs under the Printing Presses and Publications Act 1984 (Act 301). The second respondent is the Government of Malaysia.

[2] On 8 January 2009 the applicant received by way of facsimile a letter dated 7 January 2009 (exh MP-25) signed by one Che Din bin Yusoh on

behalf of the KSU Kementerian Dalam Negeri cancelling a previous letter dated 30 December 2008 (exh MP-22) and approving the publication permit subject to the following conditions:

(i) Permohonan penerbitan dalam Bahasa Melayu adalah dibenarkan, namun demikian, *penggunaan kalimah 'ALLAH' adalah dilarang* sehingga mahkamah membuat keputusan mengenai perkara tersebut.

(ii) Di halaman hadapan penerbitan ini, tertera perkataan 'TERHAD' yang membawa maksud penerbitan ini adalah terhad untuk edaran di gereja dan kepada penganut Kristian sahaja. ('the impugned decision').

[3] The applicant being dissatisfied with the impugned decision dated 7 January 2009 vide an application for Judicial Review No R1–25–28 of 2009 dated 16 February 2009 (encl 1) sought leave pursuant to O 53 r 3(1) of the Rules of the High Court 1980 ('the RHC') for the following relief:

(a) for an order of certiorari to quash the decision of the respondents dated 7 January 2009 that the applicant's publication permit for the period of 1 January 2009 until 31 December 2009 is subject to the condition that the applicant is prohibited from using the word 'Allah' in 'Herald – The Catholic Weekly' pending the court's determination of the matter;

(b) jointly or in the alternative, for the following declarations:

(i) that the decision of the respondents dated 7 January 2009 that the applicant's publication permit for the period of 1 January 2009 until 31 December 2009 is subject to the condition that the applicant is prohibited from using the word 'Allah' in 'Herald – The Catholic Weekly' pending the court's determination of the matter is illegal and null and void;

(ii) that pursuant to art 3(1) of the Federal Constitution the applicant has the constitutional right to use the word 'Allah' in 'Herald – The Catholic Weekly' in the exercise of the applicant's right that religions other than Islam may be practiced in peace and harmony in any part of the Federation;

(iii) that art 3(1) of the Federal Constitution which states that Islam is the religion of the Federation does not empower and/or authorise the respondents to prohibit the applicant from using the word 'Allah' in 'Herald – The Catholic Weekly';

(iv) that pursuant to art 10 of the Federal Constitution the applicant has the constitutional right to use the word 'Allah' in 'Herald – The Catholic Weekly' in the exercise of the applicant's right to freedom of speech and expression;

(v) that pursuant to art 11 of the Federal Constitution the applicant has the constitutional right to use the word 'Allah' in 'Herald – The Catholic Weekly' in the exercise of the applicant's freedom of religion which includes the right to manage its own religious affairs;

(vi) that pursuant to arts 11 and 12 of the Federal Constitution the applicant has the constitutional right to use the word 'Allah' in 'Herald – The Catholic Weekly' in the exercise of the applicant's right in respect of instruction and education of the Catholic congregation in the Christian religion;

(vii) that the Printing Presses and Publications Act 1984 does not empower and/or authorise the respondents to prohibit the applicant from using the word 'Allah' in 'Herald – The Catholic Weekly';

(viii) that the decision of the respondents dated 7 January 2009 that the applicant's publication permit for the period of 1 January 2009 until 31 December 2009 is subject to the condition that the applicant is prohibited from using the word 'Allah' in 'Herald – The Catholic Weekly' pending the court's determination of the matter is ultra vires the Printing Presses and Publications Act 1984; and

(ix) that the word 'Allah' is not exclusive to the religion of Islam.

(c) an order for stay of the decision of the respondents dated 7 January 2009 that the applicant's publication permit for the period of 1 January 2009 until 31 December 2009 is subject to the condition that the applicant is prohibited from using the word 'Allah' in 'Herald – The Catholic Weekly' pending the court's determination of the matter and/or any or all actions or proceedings arising from the said decision pending determination of this application or further order;

(d) Costs in the cause; and

(e) Any further and/or other relief that this Honourable Court may deem fit to grant.

[4] The application for judicial review is supported by the affidavit of Tan Sri Datuk Murphy Nicholas Xavier a/l Pakiam dated 16 January 2009 (encl 3) and the affidavit of Che Din bin Yusoh affirmed on 26 May 2009 (encl 9)(relied on by the applicant by a notice of intention to use affidavit dated 1 July 2009 (encl 15). The respondents opposed the application vide the affidavit of the first respondent affirmed on 6 July 2009 (encl 17).

[5] Learned leading counsel for the applicant, Mr Porres Royan informed the court that encl 1 was filed to obviate any objection that the proceeding in an earlier application No R1–25–73 of 2008 be rendered academic. On 24 April 2009 the court granted leave after it was informed the attorney-general's chambers had no objection to the leave application as the court had in an earlier application No R1–25–73 of 2008 (reported in *Titular Roman Catholic Archbishop of Kuala Lumpur v Menteri Keselamatan Dalam Negeri & Anor* [2008] 9 CLJ 503) involving a similar permit application granted leave.

[6] Enclosure 7 is the substantive application for judicial review has been fixed for hearing on 14 December 2009 together with the issue on non-justiciability as the applicant has yet to make a reply submission and to expedite proceedings after taking into consideration the observation of the Rt Honourable Chief Justice Malaysia Zaki Tun Azmi at pp 312–313 of *Majlis Agama Islam Selangor v Bong Boon Chuen & Ors* [2009] 6 MLJ 307. For completeness, the issue of non-justiciability was taken up earlier by the interveners, the Majlis Agama Islam ('MAI') and Malaysian Chinese Muslim Association ('MACMA') who became interveners by the order of court made on 3 August 2009 and which was then set aside by order of the court made on 11 November 2009. I had earlier on 3 August 2009 (after granting the order for intervention) directed that the issue of non-justiciability be tried as a preliminary point upon an oral application made by the interveners.

[7] The learned SFC, Dato' Kamaluddin on behalf of the first and second respondents expressed they were in full agreement with the written submission of the interveners dated 21 August 2009 (encl 62) made on behalf of the MAI Pulau Pinang, Majlis Agama Islam dan Adat Melayu Terengganu and Perak and he supplemented it orally whilst Tuan Hj Sulaiman on behalf of MAI Wilayah Persekutuan likewise adopted encl 62 and orally added to it. The applicant has yet to make a reply submission on the return date (14 September 2009) as other intervening events occurred (I shall advert to the non-justiciability issue at the appropriate time).

[8] The court has considered the written submissions of the applicant dated 30 November 2009; encl 79 — substantive judicial review; encl 80 — applicant's reply submission to the then fourth, fifth and seventh respondents/the then interveners (MAI Pulau Pinang, Terengganu and Perak); encl 82 — applicant's further submission to the summary of the first and second respondents together with the applicant's bundles of authorities (encls 81, 83 and 85) and the written submission of the respondents dated 14 November 2009 and supplemental written submission (encls 104 and 104A respectively) and the respondents' bundle of authorities Vols 1–3 (encls 105(1)–(3) respectively.) The court's findings are the following.

[9] As to the grounds upon which any person who is adversely affected by the decision of any public authority for purposes of O 53 r 2(4) of the RHC can canvass in seeking judicial review, the applicant has referred to the oft-cited House of Lords case of *Council of Civil Service Unions & Ors v Minister for the Civil Service* [1985] 1 AC 374 ('*CCSU*') (also relied on by the respondents) where the principles enunciated therein was followed in *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 MLJ 1 at p 66; [1999] 3 CLJ 65 at p 124. In *CCSU* at pp 410–411 Lord Diplock apart from stating further heads upon which the grounds whereby administrative action is amenable to judicial review may develop including the principle of proportionality (recognised in the administrative law of several members of the European Economic Community) opined:

> one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.

[10] The grounds of challenge in this application for judicial review are that the respondents:

(a) acted in breach of the rules of natural justice, procedural and substantive fairness and the duty to act fairly;

(b) asked the wrong questions in the decision making process;

(c) took into account irrelevant considerations;

(d) omitted to take into account relevant considerations;

(e) acted in violation of the applicant's legal rights in line with the spirit, letter and intent of arts 3, 10, 11 and 12 of the Federal Constitution;

(f) were irrational and unreasonable within the ambit of the principles laid down in *Associated Provincial Picture Houses, Limited v Wednesbury Corporation* [1948] 1 KB 223;

(g) acted irrationally and unreasonably by prohibiting the applicant from using the word 'Allah' or directly quoting the word 'Allah' from the 'Al-Kitab';

(h) acted illegally, misconstrued and misapplied the relevant provisions of the Printing Presses and Publication Act 1984;

(i) acted ultra vires the Printing Presses and Publication Act 1984;

(j) imposed conditions on the applicant which are oppressive and onerous; and

(k) acted mala fide.

[11] Thus broadly, the applicant seeks to challenge the impugned decision of the Minister (first respondent) under the heads of illegality, unconstitutionality, 'Wednesbury unreasonableness' and ultra vires the Act.

[12] Basically the first respondent sought to justify his decision as follows:

(i) ... Larangan yang dikenakan hanyalah berhubung penggunaan kalimah Allah di dalam penerbitan majalah tersebut yang bertujuan untuk memastikan tidak berlakunya kekeliruan agama yang boleh mengancam keselamatan dan ketenteraman awam serta menimbulkan sensitiviti keagamaan di Negara ini (paras 25(sic)(should read as 6,23 and 46 of the first respondent's affidavit);

(ii) Larangan yang dikenakan adalah kepada penggunaan kalimah 'Allah' di dalam penerbitan majalah tersebut kerana kalimah 'Allah' secara matannya adalah merujuk kepada Tuhan Yang Satu bagi penganut agama Islam sebagaimana termaktub di dalam Al-Quran iaitu dalam surah Al-lkhlas (paras 28.2 and 40.1 of the first respondent's affidavit);

(iii) ... kelulusan permit penerbitan tersebut adalah tertakluk kepada syarat dan garis panduan penerbitan khususnya perenggan 4.1.10 yang jelas memperuntukkan bahawa penerbitan agama selain daripada agama Islam dilarang menggunakan istilah khusus agama Islam iaitu 'Allah', 'Baitullah', 'Solat' dan 'Kaabah' (para 33 of the first respondent's affidavit);

(iv) ... perlanggaran peruntukkan Enakmen Kawalan dan Sekatan Pengembangan Agama Bukan Islam Kepada Orang Islam (Negeri-Negeri) (para 39 of the first respondent's affidavit);

(v) terdapat perkataan alternatif lain yang pemohon boleh gunakan kerana dari segi terjemahan, adalah jelas bahawa tiada sebarang kamus yang diiktiraf yang mendefinasikan perkataan 'God' sebagai Allah dalam Bahasa Melayu (para 40.2 of the first respondent's affidavit);

(vi) keputusan tersebut adalah sah dan munasabah sebagaimana yang diperuntukkan oleh *polisi kerajaan* dan undang-undang terpakai termasuk peruntukan Enakmen Kawalan dan Sekatan Pengembangan Agama Bukan Islam Kepada Orang Islam (Negeri-Negeri) (para 41 of the first respondent's affidavit);

(vii) ... dalam hal perkara penerbitan, Responden Pertama mempunyai bidangkuasa di bawah peruntukan undang-undang untuk

mengenakan apa-apa syarat kepada permit penerbitan sebagaimana yang difikirkan perlu dan wajar dan sebagaimana *arahan kerajaan* (para 42 of the first respondent's affidavit);

(viii) ... kalimah Allah adalah nama khas bagi Tuhan Yang Maha Esa bagi penganut agama Islam dan ini jelas termaktub di dalam Al-Quran dan dimartabatkan di dalam Perlembagaan Persekutuan (para 45 of the first respondent's affidavit); and

(ix) ... di kalangan rakyat Malaysia, kalimah 'Allah' secara matannya merujuk kepada Tuhan Yang Maha Esa bagi penganut agama Islam (para 46 of the first respondent's affidavit).

[13] Learned SFC, Dato' Kamaludin submitted by virtue of r 3 of the Printing Presses and Publications (Licenses and Permits) Rules 1984 (sic-should read as 1984) (PU (A) 305/84) ('the 1984 Rules') read together with ss 6 and 26 of the Printing Presses and Publications Act 1984 ('the Act'), the decision made by the first respondent is legal and in accordance with the law and the first respondent may attach any conditions which he deemed fit.

[14] Section 6 of the Act provides (the material part):

(1) The Minister may in his absolute discretion grant —

(a) to any person a permit to print and publish a newspaper in Malaysia; ...

(2) The Minister may at any time revoke or suspend a permit for any period he considers desirable ...

[15] Section 26 of the Act (material parts) provides:

(1) The Minister may from time to time make rules to carry out the purposes of this Act.

(2) Without prejudice to the generality of the powers conferred by subsection (1), such rules may provide for —

(a) ...

(b) ...

(c) ...

(d) The procedure for application of, the fees for and *the conditions to*

be attached to, a licence or *permit*, the payment of a deposit upon the issue of a licence or permit and the circumstances in which the deposit may be forfeited;

(e) ...

(f) ...

(Emphasis added.)

[16] I agree with Mr Royan that it appears that learned SFC contends that the source of power to impose conditions are the 1984 Rules made pursuant to s 26 of the Act. With regret I cannot accept the respondents' contention. I agree with the applicant's submission that the source of the Minister of Home Affair's power to impose conditions is s 12 of the Act which reads 'A licence or permit granted under this Act shall be subject *to such conditions as may be endorsed therein* and shall, unless sooner revoked or suspended, be valid for a period of twelve months from the date of the granting or issue of such licence or permit or for such shorter period as may be specified in the licence or permit'. (Emphasis added).

[17] I also agree with Mr Royan that r 3 of the said 1984 Rules relied on by learned SFC merely provides the mechanism by which conditions are imposed. In the case of a permit the standard form permit is in Form B of the First Schedule titled 'Publication Permit (Malaysia)' bearing the specified standard conditions on the reverse of the permit as is apparent from a reading of r 3. '*The* licence and *permit granted under the Act* shall be in the forms appearing in the First Schedule containing such conditions as are specified therein *and such further conditions as may be endorsed therein by the Minister*'. (Emphasis added). In other words s 12 is the enabling provision under the Act by which the Minister derives his power to impose conditions and the form of the permit and the standard conditions in the permit including the further conditions which the Minister may endorse are governed by r 3 of the 1984 Rules.

[18] Flowing from this I am of the view that learned SFC's contention that the applicant cannot challenge the first respondent's decision because of the ouster clause in s 13A of the Act is misconceived.

[19] Section 13A(1) of the Act reads 'Any decision of the Minister to refuse to grant or to revoke or to suspend a licence or permit shall be final and shall not be called in question by any court on any ground whatsoever'. On the face of it, under s 13A(1) of the Act, a decision of the Minister to refuse to grant or to revoke or to suspend a licence or permit cannot be challenged; however, I am of the view that it does not apply to the imposition of

conditions, more so where the conditions impinge on matters of the constitution and in this regard I agree with Mr Royan any provision which restricts a constitutional right should be construed strictly. There are a plethora of authorities which indicate that judicial review is not ousted to correct errors of law by an administrative body or tribunal. It would suffice to refer to two authorities cited by Mr Royan. The first is *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 MLJ 1; [1999] 3 CLJ 65 where at pp 41–42 (MLJ); p 97 (CLJ) the Federal Court in considering the second part of a question in respect of which leave was given, ie the issue of the effect of an ouster clause on the jurisdiction of the court to grant judicial review held at p 45 (MLJ); p 101 (CLJ):

> In our view, therefore, unless there are special circumstances governing a particular case, notwithstanding a privative clause, of the 'not to be challenged, etc' kind, judicial review will lie to impeach all errors of law made by an administrative body or tribunal and, we would add, of inferior courts. In the words of Lord Denning in *Pearlman v Harrow School* (*ibid*) at p 70, 'No court or tribunal has any jurisdiction to make an error of law on which the decision in a case depends. If it makes such an error it goes outside its jurisdiction and certiorari will lie to correct it'.

[20] The second authority is *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317 referred to in *Majlis Perbandaran Pulau Pinang* at p 42 (MLJ); p 97 (CLJ) where the Court of Appeal at p 342E–H speaking through His Lordship Gopal Sri Ram (now FCJ), inter alia, said:

> An inferior tribunal or other decision making authority, whether exercising a quasi-judicial function or purely administrative function, has no jurisdiction to commit an error of law (which categories of such error are not closed) ... Since an inferior tribunal has no jurisdiction to commit an error of law, its decisions will not be immunised from judicial review by an ouster clause however widely drafted.

(i) Illegality

[21] The applicant submits the first respondent has failed to take into account one or more of the *relevant considerations* appearing at para 52(i)–(xxii) of the applicant's affidavit in support which I have reproduced below as it is pertinent to the issue at hand:

(i) The word 'Allah' is the correct Bahasa Malaysia word for 'God' and in the Bahasa Malaysia translation of the Bible, 'God' is translated as 'Allah' and 'Lord' is translated as 'Tuhan';

(ii) For 15 centuries, Christians and Muslims in Arabic-speaking countries have been using the word 'Allah' in reference to the One God. The Catholic Church in Malaysia and Indonesia and the great majority of other Christian denominations hold that 'Allah' is the legitimate word for 'God' in Bahasa Malaysia;

(iii) The Malay language has been the lingua franca of many Catholic believers for several centuries especially those living in Melaka and Penang and their descendants in Peninsular Malaysia have practised a culture of speaking and praying in the Malay language (exh MP-26);

(iv) The word 'God' has been translated as 'Allah' in the 'Istilah Agama Kristian Bahasa Inggeris ke Bahasa Malaysia' first published by the Catholic Bishops Conference of Malaysia in 1989;

(v) The Malay-Latin dictionary published in 1631 had translated 'Deus' (the Latin word for God) as 'Alla' as the Malay translation (exh MP-27);

(vi) The Christian usage of the word 'Allah' predates Islam being the name of God in the old Arabic Bible as well as in the modern Arabic Bible used by Christians in Egypt, Lebanon, Iraq, Indonesia, Malaysia, Brunei and other places in Asia, Africa etc;

(vii) In Bahasa Malaysia and Bahasa Indonesia, the word 'Allah' has been used continuously in the printed edition of the Matthew's Gospel in Malay in 1629, in the first complete Malay Bible in 1733 and in the second complete Malay Bible in 1879 until today in the Perjanjian Baru and the Alkitab;

(viii) Munshi Abdullah who is considered the father of modern Malay literature had translated the Gospels into Malay in 1852 and he translated the word 'God' as 'Allah';

(ix) There was already a Bible translated into Bahasa Melayu in existence before 1957 which translation was carried out by the British and Foreign Bible Society where the word 'Allah' was used (exh MP-28);

(x) There was also already in existence a Prayer book published in Singapore on 3.1.1905 where the word 'Allah' was used (exh MP-29);

(xi) There was also a publication entitled 'An Abridgment of the Christian Doctrine' published in 1895 where the word 'Allah' was used (exh MP-30);

(xii) Another publication entitled 'Hikajat Elkaniset' published in 1874 also contains the word 'Allah' (exh MP-31);

(xiii) The Bahasa Indonesian and the Bahasa Malaysia translations of the Holy Bible, which is the Holy Scriptures of Christians, have been used by the Christian natives of Peninsular Malaysia, Sabah and Sarawak for generations;

(xiv) The Bahasa Malaysia speaking Christian natives of Peninsular Malaysia, Sarawak and Sabah had always and have continuously and consistently used the word 'Allah' for generations and the said word 'Allah' is used in the Bahasa Malaysia and Bahasa Indonesian translations of the Bible used throughout Malaysia;

(xv) At least for the last three decades the Bahasa Malaysia congregation of the Catholic Church have been freely using the Alkitab, the Bahasa Indonesia translation of the Holy Bible wherein the word 'Allah' appears;

(xvi) The said publication is a Catholic weekly as stated on the cover of the weekly and is intended for the dissemination of news and information on the Catholic Church in Malaysia and elsewhere and is not for sale or distribution outside the Church;

(xvii) The said publication is not made available to members of the public and in particular to persons professing the religion of Islam;

(xviii) The said publication contains nothing which is likely to cause public alarm and/or which touches on the sensitivities of the religion of Islam and in the fourteen years of the said publication there has never been any untoward incident arising from the applicant's use of the word 'Allah' in the said publication;

(xix) In any event the word 'Allah' has been used by Christians in all countries where the Arabic language is used as well as in Indonesian/Malay language without any problems and/or breach of public order and/or sensitivity to persons professing the religion of Islam in these countries;

(xx) Islam and the control and restriction of religious doctrine or belief among Muslims professing the religion of Islam is a state matter and the Federal Government has no jurisdiction over such matters of Islam save in the federal territories;

(xxi) The subsequent exemption vide P.U.(A) 134/82 which permits the Alkitab to be used by Christians in churches *ipso facto* permits the use of the word 'Alah' in the said publication;

(xxii) The Bahasa Malaysia speaking congregation of the Catholic Church uses the word 'Allah' for worship and instruction and that the same is permitted in the Al-Kitab.

[22] The applicant further submits that none of the above-mentioned factual considerations were ever disputed or challenged by the first respondent as factually incorrect. I am incline to agree with the applicant as the response of the first respondent to the factual averments is a feeble denial in para 41 of the affidavit of the first respondent which reads 'Keseluruhan pernyataan-pernyataan di perenggan-perenggan 50, 51 dan 52(i)–(xxii) Affidavit Sokongan Pemohon *adalah dinafikan* ... (Emphasis added.). In *Minister of Labour, Malaysia v Lie Seng Fatt* [1990] 2 MLJ 9; [1990] 1 CLJ (Rep) 195 (case relied on by the respondents) the issue turns on the extent of the power of the Minister of Labour to refer or not to refer the representations to the Industrial Court under s 20(3) of the Industrial Relations Act 1967 wherein the operative words are 'the Minister may, if he thinks fit refer the representations to the court'. The Supreme Court followed, inter alia, *Padfield & Ors v Minister of Agriculture, Fisheries and Food & Ors* [1968] 1 All ER 694 (HL) (cited by the applicant) and at p 12 (MLJ); p 199 (CLJ) stated:

> The Minister's discretion under s 20(3) is wide but not unlimited. As stated earlier so long as he exercises the discretion without improper motive the exercise of discretion must not be interfered with by the court unless he had misdirected himself in law or *had taken into account irrelevant matters or had not taken into consideration relevant matters* or that his decision militates against the object of the statute. Otherwise he had a complete discretion to refuse or refer a complaint which is clearly frivolous or vexatious which in our view this is one. (Emphasis added).

[23] Therefore I find the first respondent in the exercise of his discretion to impose further conditions in the publication permit has not taken into account the relevant matters alluded to above, hence committing an error of law warranting this court to interfere and I am of the view that the decision of the respondents dated 7 January 2009 ought to be quashed.

[24] The applicant also contends in para 30 of the applicant's affidavit that the respondents have taken into account one or more of the following *irrelevant considerations* which are reproduced:

(i) that Article 3(1) of the Federal Constitution states that Islam is the official religion of the Federation;

(ii) that Article 11(4) of the Federal Constitution permits laws to be made to control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam;

(iii) that several states have made laws to control or restrict propagation among persons professing the religion of Islam and have prohibited the use of certain words or phrases of the religion of Islam in publications of other religions;

(iv) that due to the differences in the words and phrases prohibited in the various states, confusion has arisen as to what words and phrases are prohibited especially in Christian publications in the Indonesian language which were brought into Malaysia;

(v) that in the late 1970s and early 1980s there was uneasiness [kegelisahan] among the community and problems of enforcement among religious officers in the various states due to differences as to the words and phrases prohibited;

(vi) that following the above, the issue had become sensitive and had been classified as a security issue;

(vii) that the Second Respondent had decided that the Ministry of Internal Security which controls published materials under Section 7(1) of the Printing Presses And Publications Act 1984 is to deal with the issue;

(viii) that vide P.U.(A) 15/82, the Second Respondent had gazetted the prohibition of the Al-Kitab in Malaysia under Section 22 of the Internal Security Act 1960;

(ix) that after considering the appeals from various Christian bodies and institutions, the Second Respondent granted a special exemption to the said prohibition vide P.U.(A) 134 dated 13.5.1982 by stating that the use and possession of the Al-Kitab is allowed by Christians only in churches;

(x) that there was continuing confusion and uneasiness in the community when enforcement on the use of the words and phrases in religious publications was not effective;

(xi) that on 19.5.1986, the Second Respondent decided that from the 16 prohibited words, the words 'Allah', 'Kaabah', 'Baitullah' and 'Solat' are words and phrases exclusive to the religion of Islam and cannot be used in published materials of other religions save to explain concepts pertaining to the religion of Islam;

(xii) that the Second Respondent issued a circular vide KKDN. S.59/3/6/A dated 5.121986 to Christian publishers to comply with that decision;

(xiii) that the Second Respondent had permitted the use of the Al-Kitab by Christians in churches only and not in any other place;

(xiv)that the aforesaid permission did not extend to other Christian publications other than the translation of the Bible in Bahasa Melayu, i.e. the Al-Kitab.

[25] In rebuttal, the respondents in para 30 of the first respondent's affidavit, 'perenggan 30 Afidavit Sokongan Pemohon dirujuk dan saya sesungguhnya mempercayai dan menyatakan bahawa pernyataan-pernyataan di dalamnya adalah kesimpulan yang dibuat oleh Pemohon sendiri tanpa merujuk kepada surat-surat Responden Pertama yang dikeluarkan kepada Pemohon secara spesifik'.

[26] I find the reply of the respondents to be inaccurate as in para 30 of the applicant's affidavit, it is stated that the matters set out as irrelevant considerations for imposing the prohibition of use of various words and phrases by religions other than Islam were gleaned from '(the respondents') various letters ... over the last 10 years'. To drive home the point in fact the 'Arahan Kerajaan' dated 5 December 1986 (exh DSHA-1) (para 8 of the first respondent's affidavit) and dated 19 May 1986 (exh DSHA-2) (para 9.1 of the first respondent's affidavit) are the very same directives averred to in para 30(xi) and (xii) of the applicant's affidavit.

[27] As to the constitutional provisions of arts 3(1) and 11(4) of the Federal Constitution referred to in para 30(i) and (ii) of the applicant's affidavit, I shall be reverting to them when addressing the issue of unconstitutionality and the constitutionality of the state enactments.

[28] With respect to the averments made by the first respondent referred to para 12(i), (viii) and (ix) alluded to above, I am incline to agree with the applicant that there is no factual basis in view of the uncontroverted historical evidence averred in para 52 of the applicant's affidavit (see paras 21–22 above). I find support in the case of *Sagnata Investments Ltd v Norwich Corporation* [1971] 2 QB 614 (cited by the applicant), which relates to an application for a permit under the Betting, Gaming and Lotteries Act 1963 by the company for the provision of amusements with prizes were refused by the licensing committee of the local authority, which adopted a general policy not to permit amusement arcades. On appeal by the local authority against the recorder's order allowing the company's appeal which was affirmed by the Divisional Court, the Court of Appeal (majority decision) dismissed the appeal and held that there was no factual basis for a policy that the amusement arcade would be likely to have undesirable social effects on young people and upheld the company's claim for a permit (see pp 631, 632 H-I to 633; 637–639 E).

[29] The case of *Minister of Home Affairs v Persatuan Aliran Kesedaran Negara* [1990] 1 MLJ 351; [1990] 1 CLJ (Rep) 186 cited by the respondents, albeit a case under the Act is in my view an authority which favours the applicant rather than the respondents as it reinforces the point regarding the three grounds upon which administrative action is subject to judicial review as referred to in *CCSU*; one ground is 'illegality' and one of the factors for consideration is whether the Minister of Home Affairs has taken into account all relevant considerations and has not taken irrelevant matters into consideration in exercising his discretion to reject Aliran's application for a permit and in this instant case to impose the condition under dispute in the publication permit.

(ii) Unconstitutionality

[30] The applicant's grounds for the reliefs of certiorari and declaration is premised on the unconstitutional acts and conduct being inconsistent with arts 3(1), 10, 11 and 12 of the Federal Constitution namely:

(i) The Applicant's legal right to use the word 'Allah' in the said publication stems from the Applicant's constitutional rights to freedom of speech and expression and religion, to practise its religion in peace and harmony in any part of the Federation and to manage its own religious affairs and to instruct and educate the Catholic congregation in the Christian religion as enshrined in Articles 3, 10, 11 and 12 of the Federal Constitution. The exercise of these rights extends to propagating the faith amongst the non-English speaking faithful in Malaysia especially the Indonesians and the Arabic-speaking of the Christian faith (para 48 of the applicant's affidavit);

(ii) The Applicant has a very important role in instructing and educating the Catholic congregation in the Christian religion in various languages and the said publication serves as a very effective avenue and medium by which the teachings of the Catholic Church are imparted to the Catholic faithful throughout Malaysia and elsewhere. Since the teaching of Catholic doctrines is effectively carried out by the said publication in fulfillment of the Applicant's apostolic mission and this teaching includes the use of the word 'Allah' especially with regard to the Bahasa Malaysia and Arabic speaking community, any action by the respondents to revoke the Publication Permit of the said publication on the grounds that the said publication is prohibited from using the word 'Allah' would result in the applicant losing a very important teaching tool and this would be a very serious violation of the Applicant's constitutional right under Article 12 of the Federal Constitution (para 49 of the applicant's affidavit).

[31] In rebuttal to para 48, the respondents made a bald statement by merely averring '... larangan yang dikenakan sama sekali tidak melanggar hak asasi Pemohon' under the relevant articles (para 38 of the first respondent's affidavit). In response to para 49, the respondents aver 'pernyataan Pemohon itu jelas sekali menunjukkan tindakan Pemohon tersebut menjurus kepada perlanggaran peruntukan Enakmen Kawalan dan Sekatan Pengembangan Agama Bukan Islam Kepada Orang Islam (Negeri-negeri)'. I am of the view para 49 of the applicant's affidavit remains uncontroverted as I cannot comprehend how the applicant's conduct can amount to a contravention of the various Control and Restriction of the Propagation of Non Islamic Religions Enactments as I find there are no nexus between them.

[32] The respondents have submitted that the applicant have not demonstrated in their affidavit that (i) they are unable to profess and practise their religion under arts 3 and 11 because they have been prohibited from using the word 'Allah' in the Herald but merely stated that it would be difficult for the church to teach its bahasa Melayu speaking followers and the word 'Allah' is a translation for 'God' which is wrong as the proper translation is 'Tuhan'; (ii) that the prohibition has obstructed the integral practice of their religion citing *Meor Atiqulrahman bin Ishak (an infant, by his guardian ad litem, Syed Ahmad Johari bin Syed Mohd) & Ors v Fatimah bte Sihi & Ors* [2006] 4 MLJ 605; [2006] 4 CLJ 1.

[33] With respect I cannot accept the respondents' contention. Firstly, it is to be noted art 3(1) reads 'Islam is the official religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation'. In *Meor Atiqulrahman bin Ishak* the issue was whether the School Regulations 1997, in so far as it prohibits the wearing of 'serban' (turban) by students of the school as part of their uniform during school hours violated art 11(1) of the Federal Constitution. To consider whether a particular law or regulation is constitutional or not under art 11(1), His Lordship Abdul Hamid Mohamad FCJ (as he then was) (speaking on behalf of the Federal Court) at para 17 p 610 (MLJ); p 9 (CLJ) stated that whether a practice is or is not an integral part of the religion is not the only factor to be considered; there are other equally important factors and advocated the following approach:

> First, there must be a religion. Secondly, there must be a practice. Thirdly, the practice is a practice of that religion. All these having been proved, the court should then consider the importance of the practice in relation to the religion. This is where the question whether the practice is an integral part of the religion or not becomes relevant. If the practice is of a compulsory nature or 'an integral part' of the religion, the court should give more weight to it. If it is not, the court, again depending on the degree of its importance, may give a lesser weight to if.

[34] Further His Lordship referred to other factors (i) at para 19 at p 611 (MLJ); p 9 (CLJ) 'The next step is to look at the extent or seriousness of the prohibition. A total prohibition certainly should be viewed more seriously than a partial or temporary prohibition'; and (ii) at para 20 p 611 (MLJ); p 9 (CLJ) 'Then, we will have to look at the circumstances under which the prohibition is made'.

[35] Applying the principles enunciated in *Meor Atiqulrahman bin Ishak* to the instant case, there is no doubt that Christianity is a religion. The next question is whether the use of the word 'Allah' is a practice of the religion of Christianity. In my view there is uncontroverted historical evidence alluded to in para 52(i)–(xxii) alluded to above which is indicative that use of the word 'Allah' is a practice of the religion of Christianity. From the evidence it is apparent the use of the word 'Allah' is an essential part of the worship and instruction in the faith of the Malay (Bahasa Malaysia) speaking community of the Catholic church in Malaysia and is integral to the practice and propagation of their faith.

[36] The next consideration is the circumstances under which the 'prohibition' was made. The circumstances to my mind would be the factors which the respondents rely on to justify the impugned decision which have been alluded to in para 12(i)–(ix) above.

[37] As to the ground in para 12(i) in my judgment, this is unmeritorious for the reason which has been dealt under the issue of whether the use of the word 'Allah' endangers public order and national security. As to the ground in para 12(ii),(iii), (v) and (ix), I have shown unchallenged evidence that there is a well established practice for the use of the 'Allah' amongst the Malay speaking community of the Catholic faith in Peninsular Malaysia, Sabah and Sarawak and the origin of the word and its translation. With respect to the ground in para 12(iv), (vi) and (vii) I find this issue is without merit as shown in paras 50 and 56 below.

[38] Considering all the factors, in my judgment, the imposition of the condition in the publication permit prohibiting the use of the word 'Allah' in the said publication, 'Herald – the Catholic Weekly' pursuant to the first respondent's exercise of powers under the Act contravenes the provision of arts 3(1), 11(1) and 11(3) of the Federal Constitution and therefore is unconstitutional.

[39] In *Dr Mohd Nasir bin Hashim v Menteri Dalam Negeri Malaysia* [2006] 6 MLJ 213 (cited by the applicant), the appellant and 12 others met to form PSM. They formed a committee of seven. An application was made to the Registrar of Societies (ROS) to register themselves as a political party.

The ROS declined to grant registration at a national level but was prepared to grant registration in the State of Selangor. Dissatisfied the appellant appealed to the Minister of Home Affairs and was dismissed on two grounds, one of which was the registration was not in the interest of national security based on information made available by the police to the Minister. The appellant contended his fundamental right under art 10(1)(c) of the Federal Constitution to form PSM had been infringed by the ROS and the Minister and argued that the departmental policy of the ROS not to register at the national level is a restriction not authorised by the Constitution. The applicant has succinctly summarised the findings of the Court of Appeal (pp 218–220) as follows:

> the Court of Appeal noted that art 10(2)(c) uses the formula '*such restrictions as it deems necessary or expedient*'. In examining the all important question of whether Parliament is free to impose any restriction however unreasonable that restriction may be, the Court of Appeal referred to *Nordin bin Salleh & Anor v Dewan Undangan Negeri Kelantan & Ors* [1992] 1 MLJ 343, the Privy Council's case of *Prince Pinder v The Queen* [2002] UKPC 46, and *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29 (FC) and held that the Federal Constitution, especially those articles in it that confer on the citizens the most cherished of human rights, must on no account be given a literal meaning. The Court of Appeal was also mindful of the fact that when interpreting the other parts of the Constitution, the court must bear in mind the all-pervading provision of art 8(1). Against the background of these principles the Court of Appeal read the word '*reasonable*' into the sub-cll of art 10(1). The court held that it must not permit restrictions upon the rights conferred by art 10 that render those rights illusory. In other words, Parliament may only impose *such restrictions as are reasonably necessary*.

[40] In the instant case, the applicant claims there is an infringement of art 10(1)(a) of the Federal Constitution which reads:

(1) Subject to Clauses (2), (3) and (4) —

(a) every citizen has the right to freedom of speech and expression.

Clause 2 of art 10 reads:

(2) Parliament may by law impose —

(a) on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any

Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence.

[41] It is to be noted that the same operative words appear in restricting the rights conferred by cl (1)(a) of art 10 ie 'such restrictions as it deems necessary or expedient'. Applying the principle propounded in *Dr Mohd Nasir bin Hashim* to the factual matrix in this case, the court has to examine whether the restrictive legislative restriction ie the imposition of the condition prohibiting the use of the word 'Allah' in the said publication amounts to an unreasonable restriction on the freedom of speech and expression under art 10(1)(c) and an unreasonable administrative act which impinges on the first limb of art 8(1) which demands fairness of any forms of state action. The only conclusion that can be drawn is that the imposition of the condition prohibiting the use of the word 'Allah' in the said publication is unreasonable for the same reasons when I found that the first respondent's exercise of powers under the Act contravenes the provision of art 11(1) and 11(3) of the Federal Constitution and therefore is unconstitutional but in this instance it contravenes art 10(1)(c).

[42] Thus for all the reasons stated I find that there is merit in the applicant's contention that the condition imposed ie the applicant is prohibited in using the word 'Allah' in the bahasa Melayu version of the Herald is illegal null and void.

(iii) Irrationality/Wednesbury unreasonableness

[43] The applicant challenges the impugned decision under this head of irrationality/Wednesbury unreasonableness which applies to 'a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it' (see *CCSU* at p 410).

[44] The grounds upon which the applicant mounts this head of challenge are those under the heads of illegality and unconstitutionality together with the following additional grounds:

(a) It is utterly irrational and unreasonable on the part of the Respondents on the one hand not to prohibit the congregation of the Catholic Church to use the word 'Allah' for worship and instruction in their faith and in the Al-Kitab and on the other hand to state that the same word cannot be used in the said publication which serves to assist these persons in their worship and provide a medium of

instruction in their faith and to disseminate news and information (see para 52(xxi) of the applicant's affidavit). A

(b) It is also utterly irrational and unreasonable on the part of the Respondents to require the Bahasa Malaysia speaking congregation of the Catholic Church to use another word to denote the Bahasa Malaysia word for 'God' instead of the word 'Allah' when such is and has always been the word used for the word 'God' in the Catholic Church and throughout the Bahasa Malaysia speaking community of the Church in Malaysia (see para 52(iii) and (xiv) of the applicant's affidavit). B C

[45] The respondents argue the first respondent was acting perfectly within the four corners of his jurisdiction and had taken into account relevant considerations such the status of Islam under the Constitution, the various enactments on control and restrictions on the propagation of religious doctrine or belief among Muslims, government policy, public security and safety and religious sensitivity. D

[46] Firstly, as far as the two areas of challenge under the heading of illegality and unconstitutionality are concerned, I adopt my views expressed with respect to these two grounds. E

[47] In relation to the two additional grounds mentioned in para 44 above, the respondents responded: F

(i) Merujuk kepada perenggan 20 Afidavit Sokongan Pemohon, Responden-Responden menegaskan bahawa Pernyataan YAB Perdana Menteri tersebut yang telah dikeluarkan melalui media cetak 'The Star' pada 20/4/2005 adalah amat jelas mengarahkan agar di kulit 'Bible' dalam versi Bahasa Melayu dinyatakan secara jelas bahawa ianya bukan untuk orang Islam dan ianya hanya dijual di kedai-kedai orang Kristian. Walau bagaimanapun saya sesungguhnya mempercayai dan menyatakan bahawa kenyataan media yang dirujuk itu adalah berhubung dengan Al-Kitab (Bible) sahaja dan tidak relevan kepada isu permit penerbitan Herald — the Catholic Weekly yang mana syarat yang dikenakan adalah amat jelas dan perlu dipatuhi oleh Pemohon (para 22 of the first respondent's affidavit); and G H

(ii) the circulation of the Al-Kitab vide PU (A) 134 dated 13 May 1982 was made subject to the condition that its possession or use is only in churches by persons professing the Christian religion, throughout Malaysia. I

[48] I find the two additional grounds submitted by the applicant in para 44 above to be of substance. It is to be noted that a common thread runs through like a tapestry in the respondents' treatment of restricting the use of the word 'Allah' which appears in the Al-Kitab are (i) that it is not meant for Muslims; (ii) to be in the possession or use of Christians and in churches only. In fact these restrictions are similar to that imposed as a second condition in the impugned decision save for the endorsement of the word 'Terhad' on the front cover of the said publication. Relying on the chapter on maxims of interpretation at para 44 p 156 of *NS Bindra's Interpretation of Statute*, there is a maxim 'Omne majus continet in se minus' which means 'The greater contains the less'. One would have thought having permitted albeit with the usual restrictions the Catholic Church to use the word 'Allah' for worship and in the Al-Kitab, it would only be logical and reasonable for the respondents to allow the use of the word 'Allah' in the said publication drawing an analogy by invoking the maxim 'The greater contains the less'. Indeed I am incline to agree with the applicant that the respondents are acting illogically, irrationally and inconsistently and no person similarly circumstanced would have acted in a like manner.

[49] The applicant submitted that in a review on the grounds of Wednesbury unreasonableness the Court of Appeal in *Harris Solid State (M) Sdn Bhd & Ors v Bruno Gentil s/o Pereira & Ors* [1996] 3 MLJ 489 at p 508; [1996] 4 CLJ 747 at p 749 held 'it is not merely confined to an examination of the decision-making process but may go into the merits of the decision itself'. I find there is merit in the applicant's contention that when viewed on its merits, the reasons given by the Home Ministry in the various directives defies all logic and is so unreasonable.

(iv) The constitutionality of the state Enactments

[50] The respondents submitted (i) the first respondent in his affidavit had stated that he had also taken into consideration the existence of the laws to control and restrict the propagation of religious doctrine or belief among Muslims in various states; (ii) these laws are valid under art 11(4) of the Federal Constitution and cited *Mamat bin Daud & Ors v Government of Malaysia* [1988] 1 MLJ 119 (SC) and *Sulaiman bin Takrib v Kerajaan Negeri Terengganu (Kerajaan Malaysia, intervener) & other applications* [2009] 6 MLJ 354; [2009] 2 CLJ 54 (FC) in support; (iii) if the first respondent allows the use of the word 'Allah' when there is in existence these laws, the decision will be illegal because it is going against them; (iv) one of the reason for the decision is to avoid confusion and misunderstanding among Muslims; there is no guarantee that the said publication will be circulated only among Christians and will not fall into the hands of Muslims and it has gone online and is accessible to all.

[51] Pursuant to art 11(4) of the Federal Constitution, ten states have enacted laws to control and restrict the propagation of religious doctrine or belief among Muslims. The laws are:

(a) Control and Restriction of the Propagation of Non Islamic Religions Enactment 1980 (State of Terengganu Enactment No 1/1980);

(b) Control and Restriction of the Propagation of Non Islamic Religions Enactment 1981 (Kelantan Enactment No 11/1981);

(c) Control and Restriction of the Propagation of Non Islamic Religions to Muslim Enactment 1988 (Malacca Enactment No 1/1988);

(d) Control and Restriction of the Propagation of Non Islamic Religions Enactment 1988 (Kedah Darul Aman Enactment No 11/1988);

(e) Non Islamic Religions (Control of Propagation Amongst Muslims) Enactment 1988 (Selangor Enactment No 1/1988);

(f) Control and Restriction of the Propagation of Non Islamic Religions Enactment 1988 (Perak No 10/1988);

(g) Control and Restriction of the Propagation of Non Islamic Religions Enactment 1989 (Pahang Enactment No 5/1989);

(h) Control and Restriction of the Propagation of Non Islamic Religions Enactment 1991 (Johor Enactment No 12/1991);

(i) Control and Restriction (The Propagation of Non Islamic Religions Amongst Muslims) (Negeri Sembilan) Enactment 1991 (Negeri Sembilan Enactment No 9/1991); and

(j) Control and Restriction of the Propagation of Religious Doctrine and Belief which is Contrary to the Religion of Islam Enactment 2002 (Perlis Enactment No 6 of 2002).

It is not disputed that s 9 of the various state Enactments provide for an offence relating to the use of certain words and expressions listed in Part I or II of the Schedule or in the Schedule itself as the case maybe of the state Constitutions and which includes the word 'Allah'. Further, all these state Enactments are made pursuant to art 11(4) of the Federal Constitution which reads 'State law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, federal law *may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam*'. (Emphasis added). At this juncture it is appropriate for the court to bear in the forefront of its mind the instructive principles of constitutional interpretation pronounced by the Federal Court in the recent case of *Sivarasa v Badan Peguam Malaysia & Anor* (unreported; 17 November 2009, Rayuan Sivil No 1–8 of 2006(W)) cited by Mr Royan where the appellant challenged the constitutionality of s 46A(1) of the Legal Profession Act 1976, which

prohibits him, an advocate and a solicitor and also an office bearer of a political party and a member of Parliament from holding office in the Bar Council. The principles are: (i) the fundamental liberties guaranteed under Part II of the Federal Constitution must be generously interpreted and that a prismatic approach to interpretation must be adopted; the provisions of Part II contain concepts that house within them several separate rights and the duty of the court is to discover whether that particular right claimed as infringed by state action is indeed submerged within a given concept; (ii) provisos or restrictions that limit or derogate from a guaranteed right must be read restrictively; (iii) the test to be applied in determining whether a constitutionally guaranteed right has been violated is 'whether it directly affects the fundamental rights or its inevitable effect or consequence on the fundamental rights is such that it makes their exercise ineffective or illusory'; (iv) the fundamental rights guaranteed under Part II is part of the basic structure of the Constitution and that Parliament cannot enact laws (including acts amending the Constitution) that violate the basic structure (per Gopal Sri Ram FCJ at paras 3.5 and 6).

[52] Mr Royan drew to the court's attention (i) that art 11(4) which is the restriction does not state that state law can forbid or prohibit but 'may control or restrict'; does not provide for state law or any other law to control or restrict the propagation of any religious doctrine or belief among persons professing a religion other than Islam; the word 'propagate' means 'to spread from person to person, ... to disseminate ...(... belief or practise, etc)' citing *Rev Stainislaus v State of Madhya Pradesh & Ors* AIR 1977 SC 908 at p 911 left column. Mr Royan submits ex facie, s 9 of the state Enactments make it an offence for a person who is not a Muslim to use the word 'Allah' except by way of quotation or reference; so it appears that a Christian would be committing an offence if he uses the word 'Allah' to a group of non-Muslims or to a non-Muslim individual. Mr Royan then argues that that cannot be the case because art 11(4) states one may 'control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam'. I am persuaded such an interpretation would be ludicrous as the interpretation does not accord with the object and ambit of art 11(4) of the Federal Constitution.

[53] I find there is merit in Mr Royan's submission that unless we want to say that s 9 is invalid or unconstitutional to that extent (which I will revert to later), the correct way of approaching s 9 is it ought to be read with art 11(4). If s 9 is so read in conjunction with art 11(4), the result will be that a non-Muslim could be committing an offence if he uses the word 'Allah' to a Muslim *but* there would be no offence if it was used to a non-Muslim. Indeed art 11(1) reinforces this position as it states 'Every person has the right to profess and practise his religion and, *subject to Clause (4), to propagate it*'.

Clause 4 restricts a person's right only to propagate his religious doctrine or belief to persons professing the religion of Islam. So long as he does not propagate his religion to persons not professing the religion of Islam, he commits no offence. It is significant to note that art 11(1) gives freedom for a person to profess and practise his religion and the restriction is on the right to propagate.

[54] I find Mr Royan's argument is further augmented by the submission of Mr Benjamin Dawson, learned counsel for the applicant which I find to be forceful stating that this rule of construction is permissible in the light of the mischief the state Enactments seek to cure and the provision has to be interpreted to conform to the Constitution (see *Sivarasa Rasiah* and *Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor* [1992] 1 MLJ 697 (SC) followed in the former case at para 6). He submitted that apart from art 11(4) itself, from the preamble to the state Enactments the mischief of the state Enactments is none other than what is set out in art 11(4) ie restriction and propagation among persons professing the religion of Islam. For completeness I shall spell out the preamble in full 'WHEREAS Article 11(4) of the Federal Constitution provides that State law may control or restrict the propagation of any religious doctrine or belief *among persons professing the religion of Islam*. AND WHEREAS it is now desired to make a law to control and restrict the propagation of non-Islamic religious doctrines and beliefs *among persons professing the religion of Islam*.' (Emphasis added).

[55] If the court does not adopt such a construction, it would render the fundamental rights as enshrined in arts 3, 8 (see *Dr Mohd Nasir bin Hashim* at para 39 above and *Sivarasa Rasiah* at para 27 as to why art 8 becomes applicable) 10, 11 and 12 relied on by the applicant as illusory.

[56] The other approach of interpretation which I would adopt is the doctrine of proportionality which is housed in the equal protection limb, the second limb of art 8(1) advocated in *Sivarasa Rasiah* (per Gopal Sri Ram FCJ at para 19) submitted by Mr Royan and Mr Dawson. From paras 27–31 of the judgment, after examining several high authorities, His Lordship Gopal Sri Ram FCJ (speaking on behalf of the Federal Court) stated the test is whether the legislative state action which includes also executive and administrative acts of the state is disproportionate to the object it seeks to achieve and in determining whether the limitation is arbitrary or excessive the threefold test is applicable — 'whether legislative or executive — that infringe a fundamental right must (i) have an objective that is sufficiently important to justify limiting the right in question; (ii) the measures designed by the relevant state action to meet its objective must have a rational nexus with that objective; and (iii) the means used by the relevant state action to infringe the right asserted must be proportionate to the object it seeks to achieve'.

[57] Applying the said test to the factual matrix of the present case the court has to bear in mind the constitutional and fundamental rights of persons professing the Christian faith to practise their religion and to impart their faith/religion to persons within their religious group and in this case, the Catholic Church comprises a large section of people from Sabah and Sarawak whose medium of instruction is Bahasa Malaysia and they have for years used religious material in which their god is called 'Allah'; for that matter there is a large community who are Bahasa Malaysia speaking from Penang and Malacca. On the other hand the object of art 11(4) and the state Enactments is to protect or restrict propagation to persons of the Islamic faith. Seen in this context by no stretch of imagination can one say that s 9 of the state Enactments may well be proportionate to the object it seeks to achieve and the measure is therefore arbitrary and unconstitutional. Following this it shows the first respondent has therefore taken an irrelevant consideration.

[58] As to the concern of the respondents there is no guarantee that the magazine would be circulated only among Christians and it will not fall into the hand of Muslims, I agree with Mr Royan there is no requirement of any guarantee be given by anyone in order to profess and practise and even to propagate it. In my view if there are breaches of any law the relevant authorities may take the relevant enforcement measures. We are living in a world of information technology; information can be readily accessible. Are guaranteed rights to be sacrificed at the altar just because the Herald has gone online and is accessible to all? One must not forget there is the restriction in the publication permit which serves as an additional safeguard which is, the word 'TERHAD' is to be endorsed on the front page and the said publication is restricted to churches and to followers of Christianity only.

[59] With respect to the learned SFC, I am of the view that the contention of the respondents that *Mamat bin Daud & Ors v Government of Malaysia* [1988] 1 MLJ 119 (SC) and *Sulaiman bin Takrib v Kerajaan Negeri Terengganu (Kerajaan Malaysia, intervener) & other applications* [2009] 6 MLJ 354; [2009] 2 CLJ 54 (FC) is authority for the proposition that the state Enactments are valid under art 11(4) of the Federal Constitution is misconceived. I agree with Mr Royan that the two authorities have nothing to do with the state Enactments. In *Mamat bin Daud*, the issue was whether s 298A of the Penal Code which was enacted by Parliament by an amending Act in 1983 is ultra vires art 74(1) of the Federal Constitution. The petitioners contended the law was invalid as being ultra vires the Constitution because having regard to the pith and substance of the section, it is a law which ought to be passed not by Parliament but by the State Legislative Assemblies except in the Federal Territories of Kuala Lumpur and Labuan, it being a legislation on Islamic religion under art 11(4) and item 1 of List II, Ninth Schedule. By a majority decision of 3–2, the Supreme Court held that

s 298A of the Penal Code is invalid, null and void after having considered and examined the section as a whole, it is a colourable legislation in that it pretends to be a legislation on public order, when in pith and substance it is a law on the subject of religion with respect to which only the states have power to legislate under arts 74 and 77 of the Federal Constitution (see Headnotes at p 119). As for *Sulaiman bin Takrib* the petitioner, a Muslim was charged with offences under ss 10 and 14 of the Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001 ('SCOT'). The proceedings before the Federal Court was commenced under art 4(4) of the Federal Constitution for a declaration that s 51 of the Administration of Islamic Religious Affairs (Terengganu) Enactment 2001 and ss 10 and 14 of the SCOT which were enacted by the State Assembly of Terengganu ('SLAT') were invalid on the ground the SLAT has no powers to make such provisions.

(v) Public security and order

[60] Learned SFC submits in para 6 of the first respondent's affidavit the first respondent states '(b) Dalam mencapai keputusan tersebut, saya berpuashati bahawa penggunaan kalimah 'ALLAH' dalam penerbitan majalah Herald – The Catholic Weekly akan mengancam keselamatan dan ketenteraman awam serta menimbulkan sensitiviti keagamaan di kalangan rakyat Malaysia'. Based on this, learned SFC further submits the grounds of public security, public order and religious sensitivity are legal, rational and reasonable of which the judges are the executive and the court is not in a position to question the issue and must accept these reasons citing *Kerajaan Malaysia & Ors v Nasharuddin Nasir* [2004] 1 CLJ 81 and *R v Secretary of State for the Home Department, ex parte McAvoy* [1984] 3 All ER 417.

[61] The respondents also allege the applicant did not file any affidavit to dispute the facts, hence security reasons are deemed admitted by the applicant citing *Ng Hee Thoong & Anor v Public Bank Bhd* [1995] 1 MLJ 281. I find this submission is inaccurate as the applicant has at para 60 of the applicant's affidavit averred:

> 60. I wish to state that the First Respondent's reported statement that the continued use of the word 'Allah' in the said publication will bring about confusion or unease to other faith communities is clearly unfounded as the Applicant has no intentions or has never done anything to bring about any such conflict, discord or misunderstanding. Further, I reiterate that the reality of the matter is that in the last 14 years of the said publication there has never been any untoward incident arising out of the use of the word 'Allah' in the said publication.

[62] The applicant submits the respondents' reply to para 60 is in para 45:

> 45. Merujuk kepada perenggan-perenggan 59, *60* dan 63 Afidavit Sokongan Pemohon, saya sesungguhnya mempercayai dan menyatakan bahawa kalimah Allah adalah nama khas bagi Tuhan Yang Maha Esa bagi penganut agama Islam dan ini jelas termaktub di dalam Al-Quran dan dimartabatkan di dalam Perlembagaan Persekutuan.

I find from the said reply, there in merit in the applicant's contention that the first respondent has not rebutted the applicant's averment in para 60 and thus the averment 'the Applicant had never intended or caused any conflict, discord or misunderstanding and that there has never been any untoward incident arising out of the use of the word 'Allah' in the said publication in the last 14 years is to be accepted' is deemed to be accepted.

[63] There is merit in the applicant's argument that the respondents in para 45 of his affidavit (also in paras 6, 25 and 46) sought to justify imposing the condition in purported exercise of his powers under the said Act on a mere statement that the use of the word 'Allah' is a security issue which is causing much confusion and which threatens and endangers public order, without any supporting evidence. A mere statement by the first respondent that the exercise of power was necessary on the ground of national security without adequate supporting evidence is not sufficient in law (see *JP Berthelsen v Director General of Immigration, Malaysia & Ors* [1987] 1 MLJ 134 (FC); *Dr Mohd Nasir bin Hashim v Menteri Dalam Negeri Malaysia* [2006] 6 MLJ 213 (CA) which followed *JP Berthelsen*). In my view the cases of *Nasharuddin Nasir* and *ex parte McAvoy* do not spell out there ought to be total prohibition of interference from the court, rather it ought to be slow to intervene as can be inferred from the dictum of His Lordship Steve Shim CJ (Sabah and Sarawak) (as he then was) at p 97a 'It seems apparent from these cases that where matters of national security and public order are involved, the court should not intervene by way of judicial review or be hesitant in doing so as these are matters especially within the preserve of the executive, involving as they invariably do, policy considerations and the like'.

[64] I agree with the applicant there is no material to support the respondents' argument that the use of the word 'Allah' is a threat to national security or from which an inference of prejudice to national security may be inferred; all there is before the court is a mere *ipse dixit* of the first respondent '... Larangan yang dikenakan hanyalah berhubung penggunaan kalimah Allah di dalam penerbitan majalah tersebut yang bertujuan untuk memastikan tidak berlakunya kekeliruan agama yang boleh mengancam keselamatan dan

ketenteraman awam serta menimbulkan sensitiviti keagamaan di Negara ini' (*see paras 6, 25 and 46 of encl 17*). Therefore I am of the view that this ground ought to be rejected.

[65] I find there is merit in Mr Dawson's argument that the court ought to take judicial notice that in other Muslim countries even in the Middle East where the Muslim and the Christian communities together use the word 'Allah', yet one hardly hear of any confusion arising (see para 52(xix) of the applicant's affidavit which is not rebutted). Further, I am incline to agree that the court has to consider the question of 'avoidance of confusion' as a ground very cautiously so as to obviate a situation where a mere confusion of certain persons within a religious group can strip the constitutional right of another religious group to practise and propagate their religion under art 11(1) and to render such guaranteed right as illusory.

(vi) Other matters

[66] Mr Royan submits the respondents have made references to various opinions and views in their written submission (encl 104) namely; (i) p 14 at para 15 (dated 6 February 2009) (this article entitled *Isu Penggunaan Kalimah Allah* of Abu Bakar (Fellow of IKIM) is also referred in p 2 of the respondents' supplemental submission (encl 104A); (ii) p 17 at para 24 (dated 7 May 2008); (iii) p 26 at para 12 (dated 6 January 2008); (iv) p 27 at para 13 (dated 6 February 2009); (v) p 28 at para 14 (dated 20 February 2008) (this article entitled 'Heresy Arises From Words Wrongly Used' of Dr Syed Ali Tawfik Al-Attas/Dr Mohd Sani b Badron is also referred in p 3 of the respondents' supplemental submission; (vi) p 29 at para 18 (dated 6 January 2008); and (vii) p 52 at para 5 (dated 6 January 2008). I agree with Mr Royan that the passages are from articles and they have not been adduced as affidavit evidence in the usual way. Order 53 r 6 of the RHC provides any party to a judicial review application may, inter alia, apply for discovery and inspection of documents (under O 24) or to cross-examine the deponent of any affidavit filed in support or in opposition to the application pursuant to O 38. It is my opinion from the existence of O 53 r 6 it is envisaged any documentary evidence which the respondents seek to rely as proof to substantiate their claims ought to be adduced by affidavit evidence which will then give an opportunity to the applicant if they wish to challenge the 'evidence' to invoke the processes thereunder.

[67] As the passages at paras 16 and 17 of encl 104 are unsubstantiated with no mention as to the source or origin at all, I agree with Mr Royan that these are purely statements from the Bar and cannot be admitted.

[68] It is to be noted that the dates of the articles are either in 2008 or

2009. The instant judicial review application was filed on 16 January 2009 whilst the application that preceded this instant application (R1–25–73 of 2008) was filed on 19 March 2008. In the light of this I agree with the applicant these articles all of which were written round about the time when the judicial review applications were filed are self- serving documents which when weighed against the historical evidence of the applicant which is uncontroverted, I am incline not to attach any weight to these articles and opinions.

[69] The applicant contends there is a serious doubt as who is the decision maker by referring to para 5 of the first respondent's affidavit and paras 2 and 10 of the affidavit affirmed by Che Din bin Yusoh and whether the grounds set out in the affidavit of the first respondent which form the basis for the decision of 7 January 2009 are valid. I find nothing turns on this contention and it is a non-starter. I agree with Dato' Kamaluddin that in all likelihood the word 'keputusan' in para 10 was wrongly quoted by Che Din because it must be read in the context of para 2 which refers to a letter dated 7 February 2009 (exh MP-25). In para 2 of the said letter it is written 'Bahagian ini'; thus the word 'keputusan' in para 10 would logically refer to 'keputusan Bahagian saya' or 'keputusan Bahagian ini'.

(vi) Issue of justiciability

(a) Position of the fourth, fifth and seventh respondents

[70] I had on 31 December 2009 dismissed the applications of the Majlis Agama Islam (MAI) of Wilayah Persekutuan, Johore, Selangor, Kedah. Malacca, the MAI dan Adat Melayu Terengganu and MACMA to be heard in opposition under O 53 r 8 of the RHC (it is to be noted that the MAI dan Adat Melayu Perak and MAI Pulau Pinang did not file any application under O 53 r 8). That being the case their submission contending the issue of whether any publication in whatever form by a non-Muslim individual or body or entity that uses the sacred word of 'Allah' can be permitted in law is one that is within the absolute discretion of the Rulers and the Yang di-Pertuan Agong (YDPA) (in respect of Penang, Malacca, Sabah, Sarawak and the Federal Territories) as the respective Heads of Islam and is therefore non-justiciable is irrelevant at the substantive hearing of the judicial review application and need not be considered by this court.

[71] In the event I err in my finding, I shall now consider the arguments put forth by them. As highlighted by the applicant, the fourth, fifth and seventh respondents had made extensive references to the Federal Constitution, state Enactments to establish that the Rulers and the YDPA are

the Heads of Islam in the various states and Federal Territories. They then submit: A

(a) that by virtue of their position as Head of Islam, the Rulers and the YDPA have an absolute discretion on the matter of whether any publication by a non Muslim entity which uses the word 'Allah' can be permitted in law; and B

(b) that the states Enactments that control the propagation of religious doctrine or belief among Muslims which prohibit, amongst others, the use of the word 'Allah' by non Muslims confer absolute discretion on the Ruler or the Ruler in Council to determine whether any of the C prohibited words can be used by non Muslims and therefore the issue is non justiciable.

[72] I adopt the following responses of the applicant contending the application is justiciable and I am of the view there is substance: D

(a) the Federal Constitution and the state Constitutions clearly provide that the Rulers and the YDPA as the Head of Islam in the states and the Federal Territories have exclusive authority only on Islamic affairs and Malay customs; E

(b) subject to arts 10 and 11 of the Federal Constitution, the control and regulation of all publications and matters connected therewith are governed by federal law namely the Act and only the Minister for Home Affairs is involved in the implementation and enforcement of its provisions. Under this Act, only the Minister can decide what is F permitted to be published and in this regard the Rulers and the YDPA have no role whatsoever under the scheme of this Act;

(c) the present judicial review is not a judicial review of a decision of the Rulers or the YDPA as Head of Islam concerning the exercise of their G duties and functions. It is only a judicial review of the first respondent's decision to impose a prohibition on the use of the word 'Allah' by the applicant in a publication. Since the Rulers or the YDPA cannot make any decision in respect of any publications and matters connected therewith, the issue of non justiciability does not arise; H

(d) the first respondent has taken the position contrary to the contention of the fourth, fifth and seventh respondents that he has the exclusive power to make an administrative decision to impose a condition on the applicant's publication permit to prohibit the use of the word 'Allah'. The first respondent consented to leave being granted and has filed an I affidavit in reply stating that he had the requisite powers to make such decisions and accordingly sought to justify his decision. Since he has taken such a position, any argument that only the Rulers or the YDPA has such powers or absolute discretion to determine such an issue makes

a complete mockery of the first respondent's stated position and the enforcement of his powers under the Act;

(e) if this court accedes to the fourth, fifth and seventh respondents' contention this would mean that the first respondent did not have the power and was not the proper person to decide on the prohibition of the use of the word 'Allah' in the first place and surely this cannot be the correct position in law in view of the clear provisions of the Act;

(f) that the civil courts only decline jurisdiction on the grounds of non justiciability when it is absolutely clear that the 'judicial process is totally inept to deal with the sort of problems which it involves' (per Lord Diplock in *CCSU*). The civil court are not only competent to do so, they are duty bound to do so especially when the issue is one that concerns the fundamental liberties of freedom of expression and religion of the applicant under arts 10 and 11 of the Federal Constitution respectively;

(g) the court had granted leave to commence judicial proceedings and thus the court is seized with jurisdiction to hear the substantive application. This order cannot be set aside (save the order was made without jurisdiction in the first place) except by an appeal under O 53 r 9 of the RHC.

[73] For the foregoing reasons, I dismiss the fourth, fifth and seventh respondents' objection that the subject matter of these proceedings is non-justiciable with no order as to cost.

(b) Position of the first and second respondents

[74] As alluded to earlier, the learned SFC, Dato' Kamaludin is in full agreement with the submission of the third to the 11th respondents that the proceedings is non-justiciable. The salient arguments submitted by the learned SFC are:

(a) the Federal and state Constitutions recognise the YDPA and the Rulers as the protectors of the religion of Islam;

(b) the decision of the first respondent to attach a condition to the publication permit of the 'Herald – The Catholic Weekly' as stated by the first respondent in his affidavit is due to national security and to avoid confusion and misunderstanding among Muslims;

(c) there is no guarantee that the publication will only be circulated among Christians and that it will not fall into the hands of Muslims;

(d) the 'Herald – The Catholic Weekly' has gone online;

(e) it is obvious that the decision taken by the first respondent had taken into account the powers of the YPDA and the Rulers in the protection of the religion of Islam and also the existence of the state Enactments pertaining to the control and restriction of the propagation of non Islamic religions among Muslims.

[75] The court can only examine the reasons given by the first respondent as decision maker to determine the validity of the grounds of challenge mounted by the applicant. The reasons given by the Minister justifying the impugned decision are as stated in para 12(i)–(ix) above. Since there is nothing in the first respondents' affidavit either expressly or impliedly that the first respondent took into account the powers of the YPDA and the Rulers in the protection of the religion of Islam, I find the contention of the first and second respondents that the first respondent took into account the powers of the YPDA and the Rulers in the protection of the religion of Islam is flawed.

[76] In any event I agree with the applicant since the first respondent derives his powers from the Act and even if he stated that his decision took into account the powers of the YPDA and the Rulers in the protection of the religion of Islam, the court still has to consider whether this was a relevant consideration to take into account in light of the legislative scheme of the Act.

[77] I agree even if the first respondent cites this reason, it still remains the first respondent's decision which is the subject of judicial review unless it can be established that it falls within the established category of non-justiciable matters.

[78] With respect to the contention of the first and second respondents that the publication permit is governed by considerations of national security, merely citing national security is not sufficient to make a subject matter of a decision justiciable (see *Chan Hiang Leng Colin & Ors v Minister for Information and the Arts* [1996] 1 SLR 609; *Clang Suan Tze v The Minister of Home Affairs & Ors and other appeals* [1989] 1 MLJ 69; *Ahmad Yani bin Ismail & Anor v Inspector General of Police & Ors* [2005] 4 MLJ 636). The court has to determine whether the impugned decision was in fact based on ground of national security.

[79] With regard to the ground that the condition on the publication permit is to avoid confusion and misunderstanding among the Muslims, this goes to the merits of the substantive motion which warrants the court to determine whether it satisfies the Anisminic principles and this does not impinge on the issue of justiciability.

[80] With regard to the contention that the publication permit is governed

by the existence of the state Enactments pertaining to the control and restriction of the propagation of non-Islamic religions among Muslims, it is open to the applicant in these proceedings to challenge by way of collateral attack the constitutionality of the said Enactments on the ground that s 9 infringe the applicant's fundamental liberties under arts 3, 10,11 and 12 of the Federal Constitution.

[81] The court can review the constitutionality of federal and state legislation relied on by the decision maker following the test in *Nordin bin Salleh*.

[82] Issues on what is the 'polisi kerajaan' and 'arahan kerajaan' referred to in the affidavit of the first respondent and whether the word 'Allah' is a proper name exclusive to Muslims in the context of the Malaysian society and whether there is an alternative word for 'God' other than 'Allah' for the non Muslims are questions for determination at the merits stage of these proceedings and are clearly justiciable.

[83] For the foregoing reasons, I dismiss the first and second respondents' objection that the subject matter of these proceedings is non-justiciable with no order as to cost.

(c) Position of the 11th respondent.

[84] Learned counsel for the 11th respondent, Tuan Hj Sulaiman submitted:

(a) the Rulers and the YDPA are the Heads of Religion of Islam and the protectors of that religion;

(b) pursuant to the prerogative powers enjoyed by the Rulers and the YDPA, they have stated that the word 'Allah' is special to the religion of Islam and can only be used by Muslims;

(c) pursuant to this, anti propagation laws, namely the Non Islamic Religions (Control of Propagation Amongst Muslims) Enactments had been passed and these laws are the reflection of the Rulers and YDPA's prerogative to defend and protect Islam;

(d) whatever the first and second respondents are doing is merely to ensure that the laws which the Rulers and YDPA have sought to be promulgated are observed;

(e) the impugned actions of the first and second respondents is merely a carrying into force of the various state laws that are within the prerogative of the Rulers and YDPA;

(f) since the impugned actions are merely to enforce the prerogative of the rulers and YDPA, this issue is non justiciable.

[85] I am of the view that the proceeding is justiciable on some of the grounds submitted in the reply submission made by the applicant:

(a) the Rulers and YDPA have no prerogative powers to govern the affairs of other religions and the fact that the affairs of other religions are governed not by the Rulers and YDPA but by their own religious groups is clearly enshrined in art 11(3) of the Federal Constitution. If any action is taken by the Rulers and YDPA which affect the affairs of non Islamic religions, such action would be construed as unconstitutional. Further, if any laws other than those set out in art 11(4) of the Federal Constitution are passed, such laws would also be construed as unconstitutional;

(b) the legislative intent of the State Enactments is determined by the language of the Enactments and in so determining, the court when called upon to do so can examine the constitutionality of these Enactments in so far as they affect the fundamental liberties of non Muslims;

(c) in any event the contention of the 11th respondent that the first and second respondents' actions in making the decision dated 7 January 2009 were governed by the prerogative powers of the Rulers and YDPA is itself not supported by the first respondent in his affidavit.

[86] For the foregoing reasons, I dismiss the 11th respondent's objection that the subject matter of these proceedings is non justiciable with no order as to cost.

[87] The third, sixth, eighth, ninth and tenth respondents adopted the submission of the first, second, fourth, fifth, seventh and 11th respondents and therefore the court's findings at pp 48–55, will likewise apply mutatis mutandis.

[88] As regards the other points raised in the course of the arguments, I have considered them and in my view it would not alter my conclusion in any event.

[89] In conclusion in the circumstances the court grants the applicant the following order:

(a) an order of certiorari to quash the decision of the respondents dated 7 January 2009 that the applicant's publication permit for the period of 1 January 2009 until 31 December 2009 is subject to the condition that

A the applicant is prohibited from using the word 'Allah' in 'Herald – The Catholic Weekly' pending the court's determination of the matter;

(b) jointly the following declarations:

B (i) that the decision of the respondents dated 7 January 2009 that the applicant's publication permit for the period of 1 January 2009 until 31 December 2009 is subject to the condition that the applicant is prohibited from using the word 'Allah' in 'Herald – The Catholic Weekly' pending the court's determination of the matter is illegal and null and void;

C (ii) that pursuant to art 3(1) of the Federal Constitution the applicant has the constitutional right to use the word 'Allah' in 'Herald – The Catholic Weekly' in the exercise of the applicant's right that religions other than Islam may be practised in peace and harmony in any part of the federation;

D (iii) that art 3(1) of the Federal Constitution which states that Islam is the religion of the federation does not empower and/or authorise the respondents to prohibit the applicant from using the word 'Allah' in 'Herald – The Catholic Weekly;

E (iv) that pursuant to art 10 of the Federal Constitution the applicant has the constitutional right to use the word 'Allah' in 'Herald – The Catholic Weekly' in the exercise of the applicant's right to freedom of speech and expression';

F (v) that pursuant to art 11 of the Federal Constitution the applicant has the constitutional right to use the word 'Allah' in 'Herald – The Catholic Weekly' in the exercise of the applicant's freedom of religion which includes the right to manage its own religious affairs;

G (vi) that pursuant to arts 11 and 12 of the Federal Constitution the applicant has the constitutional right to use the word 'Allah' in 'Herald – The Catholic Weekly 'in the exercise of the applicant's right in respect of instruction and education of the Catholic congregation in the Christian religion;

H (c) No order as to costs.

Application allowed with no order as to costs.

I Reported by Kohila Nesan